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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,603	01/28/2004	Marc Gerald Montry	MM.001	1386

7590 06/17/2005

TIMOTHY F. LOOMIS
 14309 AUTUMN CREST DRIVE
 BOYDS, MD 20841

EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/765,603	MONTRY ET AL.	
	Examiner	Art Unit	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 135). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “two interior walls and the two ends walls slightly offset from vertical” of claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Lips (WO 98/23144).

As to claim 1, Lips discloses a metal plant container (abstract in English) comprising at least one exterior wall (region of wall between leadlines of 3 and 10 of Fig. 1c); at least one interior wall (2 of Fig. 1c); and, at least one bottom wall (“flat base” of abstract in English) connected to the interior wall to form a cavity for holding a plant, the plant container being monolithically constructed (see for example Fig. 4a).

As to claim 2, Lips further discloses at least one end wall (implied in Fig. 1c) connected to the interior wall.

As to claim 3, Lips further discloses the at least one interior wall (2 of Fig. 1c) connected to the at least one exterior wall (region of wall between leadlines of 3 and 10 of Fig. 1c).

As to claim 4, Lips further discloses at least one top wall (3 of Fig. 1c) connected to the at least one interior wall through the exterior wall.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lips (WO 98/23144) in view of Yoku (JP2002-84895).

As to claims 5 or 6, the limitations of claim 1 are disclosed and described above. Not disclosed is at least one hole in the at least one bottom wall. Yoku, however, discloses a metal plant container at least one slot/hole in the at least one bottom wall (11 of Fig. 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Lips by having holes in the bottom wall as disclosed by Yoku so as to allow for soil drainage.

As to claim 15, Lips discloses a metal plant container (abstract in English) for a plant having an aggressive growth root system comprising exterior means (region of wall between leadlines of 3 and 10 of Fig. 1c) for defining an exterior; cavity means ("flat base" of abstract in English) for defining a cavity for holding the root system; connection means (2 of Fig. 1c) for connecting the exterior and cavity means; the plant container being monolithically constructed (see for example Fig. 4a). Not disclosed is a drain means. Yoku, however, discloses a metal plant container with a drain means (11 of Fig. 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Lips by having a drain means as disclosed by Yoku so as to allow for soil drainage.

Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lips (WO 98/23144) in view of Grosfillex (Des. 338,428).

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As to claim 7, Lips discloses a metal plant container (abstract in English) comprising with two exterior walls (region of wall between leadlines of 3 and 10 of Fig. 1c); two interior walls (2 of Fig. 1c) connected to the end walls, two end walls (shown in Fig. 1c) connected to the exterior walls so as to form an exterior of the plant container; and, one bottom wall ("flat base" of abstract in English) connected to the interior and end walls to form a cavity for holding a plant, the plant container being monolithically constructed (see for example Fig. 4a). Not disclosed are two bottom walls. Grosfillex, however, discloses two bottom walls (the lowest wall portions of Fig. 5-7) connected to the interior and end walls. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Lips by having two bottom walls or using the shape of the container of Grosfillex so as to change the aesthetic appeal of the container to increase sales.

As to claims 8 and 9, Lips as modified by Grosfillex further disclose as least one slot/hole (black circles in Fig. 5 of Grosfillex).

As to claim 10, Lips as modified by Grosfillex further disclose the two exterior walls offset from vertical (Figs. 5-7 of Grosfillex).

As to claims 11 and 12, Lips as modified by Grosfillex further disclose the bottom, interior, and endwalls offset from vertical (Figs. 5-7 of Grosfillex).

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lips (WO 98/23144) in view of Grosfillex (Des. 338,428) in further view of Gutierrez (Des. 428,828).

As to claims 13 or 14, the limitations of claim 7 are disclosed and described above. Not disclosed are the two exterior walls of different length. Gutierrez, however, discloses a container

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with the exterior walls having different lengths (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the container of Lips as modified by Grosfillex by having the exterior walls different lengths so as to have a modular system and to modify the end walls to have different lengths so as to change the aesthetic appeal of the container.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lips (WO 98/23144) in view of Yoku (JP2002-84895) in further view of Corrie (GB 2018115 A).

As to claim 16, the limitations of claim 15 are disclosed and described above. Not disclosed is the exterior means being narrow at the top than the bottom. Corrie, however, discloses a container with the exterior means being narrower at the top than the bottom (10 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the container of Lips as modified by Yoku by having the exterior means being narrower at the top than the bottom as disclosed by Corrie so as to change the aesthetic appeal of the container.

As to claims 17 and 18, Lips as modified by Yoku and Corrie further disclose an intersection which is a top wall (top wall shown in Fig. 4 of Corrie).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. FR 2290142, JP2002-209444, JP2000-175565, and KR 2004035199A disclose in the

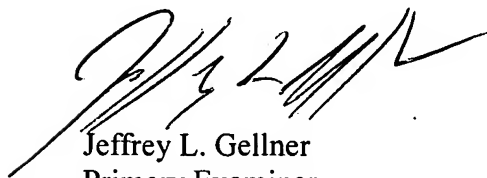
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prior art various containers with exterior walls. Hartelius et al., DE 19536194 A1, and FR 2356360 disclose in the prior art various containers different lengths to the sides.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner
Primary Examiner
Art Unit 3643